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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-00-182-52410 Office: Vermont Service Center

Date: 07 JAN 2002

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

Public Copy

INSTRUCTIONS:

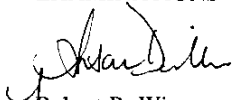
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a travel agency with 15 employees and an approximate gross annual income of \$25 million. It seeks to employ the beneficiary as a marketing coordinator for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director found that the position is that of a travel agent and concluded the petitioner had not established that the proffered position requires a baccalaureate degree in a specialized area to perform the duties of the position. On appeal, counsel argues in part that the position of marketing coordinator is a specialty occupation and the beneficiary qualifies to perform services in a specialty occupation.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- (1) contact hotels, restaurants, boutiques, beauty salons, golf clubs, theaters, yacht rental agents, car rental agents, plane charters, salons, spas, and other luxury service providers;
- (2) specialize in making arrangements/reservations for all luxury travel;

- (3) consult with travel professionals and purveyors including airline, car rental and hotel representatives to structure luxury travel programs;
- (4) research unique travel opportunities, resorts, private islands and other special luxury travel destinations across the globe;
- (5) design and market itineraries and compile information to be presented to clients;
- (6) perform research to provide information and specific details on cities, schedules for transportation and other components of client's travel;
- (7) compile and distribute marketing materials to clients regarding various destinations and travel packages;
- (8) compile a network of resources and contact people internationally in order to assist in resolving immediately any future difficulties arising during a client's travels;
- (9) meet with high profile, celebrity clientele including fashion designers, professional athletes, actors, moguls, literary figures, entertainers, etc. to ascertain their travel objectives; and
- (10) prepare all necessary paperwork, documentation, instructions, ticket bookings etc. in foreign languages.

Pursuant to 8 C.F.R. 214.2(h) (4) (iii) (A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the

duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding.

Counsel argues on appeal that the director is incorrect in his conclusion that the proffered position is that of a travel agent. Upon further review, it is concluded that the proffered position appears to combine the duties of a marketing manager with those of a travel agent. The Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 25-26 finds no requirement of a baccalaureate degree in a specialized area for employment as a marketing manager. A wide range of educational backgrounds are considered suitable for entry into marketing managerial positions. Some employers prefer degrees in business administration but bachelor's degrees in various liberal arts fields are also acceptable. In addition, certain personal qualities and participation in in-house training programs are often considered as significant as the beneficiary's specific educational background.

The Handbook at pages 283-284 also finds no requirement of a baccalaureate degree in a specialized area for employment as a travel agent. The minimum requirement is a high school diploma or its equivalent for entry into travel agent positions. As technology and computerization are having a profound effect on the work of travel agents, some form of specialized training, such as that offered in many vocational schools and adult public education programs, is becoming increasingly important. Here again, certain personal qualities and participation in in-house training programs are often considered as significant as the beneficiary's specific educational background. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

While counsel asserts that all company employees in similar positions possess either a bachelor's degree in marketing or its equivalent, no independent evidence has been submitted to corroborate this assertion.

Counsel asserts that the degree requirement is common to the industry in parallel positions and submits 14 job advertisements for positions with the title of "marketing coordinator." However, none of the jobs are for positions in the travel industry. Furthermore, the advertisements do not contain sufficient information regarding the specific duties of the positions to make a determination that the duties of those jobs are similar to those of the proffered position. As such, the petitioner has not shown

that similar firms require the services of such individuals in parallel positions.

Finally, the petitioner has not demonstrated that the duties of the proffered position are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specialized area.

The unique nature of the petitioner's business is acknowledged. However, in this case, the petitioner has not submitted sufficient documentation to establish that the proffered position qualifies as a specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.